

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

***TENTATIVE*** ORDER NO. R9-2004-0281

ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY  
FOR  
MANDATORY MINIMUM PENALTIES  
AGAINST  
ARB, INC.  
FOR VIOLATIONS  
OF  
ORDER NO. R9-2002-0020, NPDES NO. CAG679001  
GENERAL WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES OF  
HYDROSTATIC TEST WATER AND POTABLE WATER TO SURFACE WATERS  
AND STORM DRAINS OR OTHER CONVEYANCE SYSTEMS,  
SAN DIEGO REGION

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), on September 8, 2004, having received a signed waiver of public hearing form with a \$6,000 check and having reviewed the allegations contained in Complaint No. R9-2004-0191, dated May 20, 2004, and on the recommendation for administrative assessment of Civil Liability pursuant to California Water Code Section 13385 in the amount of \$6,000 finds as follows:

1. ARB, Inc. discharged hydrostatic test water to San Juan Creek during installation and testing of groundwater recovery wells in the City of San Juan Capistrano, California. The discharge is subject to waste discharge requirements, Order No. R9-2002-0020, NPDES No. CAG679001, *General Waste Discharge Requirements For Discharges of Hydrostatic Test Water and Potable Water to Surface Waters and Storm Drains or other Conveyance Systems, San Diego*. ARB, Inc. enrolled for regulation under these requirements on August 29, 2003 (WDID No. 9000001140).
2. In November and December 2003, ARB, Inc. violated Order No. R9-2002-0020. The violations were due to exceedances of effluent limitations for selenium, as reported in the October-December 2003 Quarterly Monitoring Report received by the Regional Board on March 30, 2004. ARB, Inc. reported a selenium concentration of 8.3 and 9.1 µg/l for discharges that occurred in November 2003 and a selenium concentration of 11.0 and 9.4 µg/l for discharges that occurred in December 2003. All four samples exceed the selenium effluent limitation of 8.2 µg/l by less than 40 % (Group I pollutant). The Average Monthly selenium limitation of 4.1 µg/l was exceeded by more than 40 % in November 2003 (8.7 µg/l).

3. Water Code Section 13385(h)(2) states that a “serious” violation means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40% or more. The November 2003 average monthly selenium concentration of 8.7 µg/l is considered a “serious” violation.
4. Water Code Section 13385 (i)(1) states that a “chronic” violation means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements four or more times in any period of six consecutive months, not counting the first three violations. The daily maximum selenium concentrations reported in November and December 2003 are considered “chronic” violations.
5. Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation. Water Code Section 13385 (i)(1) requires the Regional Board to assess a mandatory penalty of \$3,000 for each “chronic” violation. Under Water Code Section 13385 (h) and (i) the total amount of the mandatory minimum penalty that must be assessed is six thousand dollars (\$6,000).
6. Consideration of the factors prescribed in California Water Code Section 13385(e) based upon information available to the Regional Board supports assessment of civil liability pursuant to Water Code Section 13385 (h) and (i) in the amount of \$6,000.
7. The Regional Board incurred costs totaling \$2,350 to prosecute this enforcement action; the costs include investigation, preparation of enforcement documents, and communication with the discharger and interested parties regarding the enforcement action.
8. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

**IT IS HEREBY ORDERED** that pursuant to section 13385 of the California Water Code, civil liability is imposed on ARB, Inc. in the amount of six thousand dollars (\$6,000).

*I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on September 8, 2004.*

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JOHN H. ROBERTUS  
Executive Officer